United Nations CRC/C/OPSC/CHE/CO/1

Convention on the Rights of the Child

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Committee on the Rights of the Child

Concluding observations on the report submitted by Switzerland under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*

1. The Committee considered the initial report of Switzerland (CRC/C/OPSC/CHE/1) at its 1963rd meeting (see CRC/C/SR.1963) held on 22 January 2015, and adopted at the 1983rd meeting (see CRC/C/SR.1983). held on 30 January 2015, the following concluding observations.

I. Introduction

2. The Committee welcomes the submission of the State party's initial report and its written replies to the list of issues (CRC/C/OPSC/CHE/Q/1/Add.1). The Committee appreciates the constructive dialogue held with the multisectoral State party delegation.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with the concluding observations on the State party's combined second, third and fourth periodic reports under the Convention on the Rights of the Child (CRC/C/CHE/CO/2-4) adopted on 30 January 2015.

II. General observations

Positive aspects

4. The Committee further notes with appreciation the State party's ratification of, inter alia:

(a) The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, in March 2014;

(b) The United Nations Convention Against Transnational Organized Crime, in October 2006;

* *Adopted by the Committee at its sixty-eight session* (12–30 January 2015).

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(c) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in October 2006;

(d) The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in October 2006.

5. The Committee welcomes the various measures taken by the State party in areas relevant to the implementation of the Optional Protocol, including:

(a) Several revisions of the Criminal Code, which, inter alia, expanded the definition of human trafficking, raised the age limit for voluntary prostitution from 16 to 18 years, criminalized the consumption without possession of child pornography and prohibited persons convicted, inter alia, of human trafficking, engaging in sexual acts with a child and accessing certain types of pornography containing sexual acts with children, from exercising activities involving regular contact with children or from contacting or approaching children;

(b) Amendments to the Federal Constitution and the Criminal Code, which, inter alia, guarantee that the right to prosecute sexual offences involving prepubescent children and the penalties for such offences is not subject to a time limit.

6. The Committee further welcomes the progress achieved in the creation of institutions and the adoption of national plans and programmes that facilitate the implementation of the Optional Protocol, including:

(a) The adoption of the National Action Plan against Trafficking in Human Beings (2012–2014);

(b) The establishment of the Cybercrime Coordination Unit and the Swiss Coordination Unit against the Trafficking in Persons and Smuggling of Migrants and Crimes against Children and Pornography Unit of the Federal Police Office, in 2003 and 2007, respectively.

III. Data

Data collection

7. The Committee is concerned that a comprehensive system for data collection and disaggregated data covering all offences under the Optional Protocol is lacking in the State party, which limits the State party's capacity to monitor and assess offences under the Protocol.

8. With reference to its concluding observations under the Convention (CRC/C/CHE/CO/2-4, paras. 16 and 17), the Committee recommends that the State party develop and implement a comprehensive and systematic mechanism of data collection, analysis, monitoring and impact assessment of all the areas covered by the Optional Protocol. The data should be disaggregated, inter alia, by sex, age, national and ethnic origin, geographical location and socioeconomic status, with particular attention to the most vulnerable groups of children. Data should also be collected on the number of prosecutions and convictions, disaggregated by the nature of the offence.

IV. General measures of implementation

National plan of action

9. The Committee welcomes the adoption of the National Action Plan against Trafficking in Human Beings (2012–2014), which includes 23 measures in the areas of prevention, awareness raising, criminal prosecution, protection of and support for victims and collaboration. However, the Committee regrets the absence of a comprehensive policy and strategy on children that includes all issues covered by the Optional Protocol.

10. **With reference to its concluding observations under the Convention (CRC/C/CHE/CO/2-4, paras. 10 and 11), the Committee recommends that the State party adopt a comprehensive policy and strategy that includes comprehensive measures in all areas as required under the Optional Protocol and is provided with adequate human, technical and financial resources for its implementation. Particular focus should be placed on the prevention, protection, physical and psychological recovery and social reintegration of child victims. The Committee also encourages the State party to ensure that such policy and strategy be regularly evaluated.**

Coordination and evaluation

11. The Committee notes the information provided by the State party that it envisages to establish a working group, comprising various federal ministries and the Conference of Cantonal Directors of Social Affairs, which will be responsible for the follow-up to the recommendations of the Committee. The Committee, however, is concerned at the absence of overall coordination of the implementation of the Protocols at the federal and cantonal levels.

12. **With reference to its concluding observations under the Convention (CRC/C/CHE/CO/2-4, paras. 12 and 13), the Committee recommends that the State party designate a coordinating body capable of providing leadership and effective general oversight for the monitoring and evaluation of activities on children's rights under the Optional Protocol at the cross-sectoral, federal, cantonal and communal levels. The State party should ensure that the coordinating body is provided with the human, technical and financial resources necessary for its effective operation.**

Dissemination and awareness-raising and training

13. The Committee notes the information that a national campaign plan to raise awareness on human trafficking for the period 2017–2018 is currently being drawn up. It also notes the various efforts made to disseminate information and provide training, including through the implementation of a national youth and media programme, which aims to raise awareness on the risks associated with new media. However, the Committee is concerned that measures taken are not systematic and do not cover all areas of the Optional Protocol.

14. **The Committee recommends that the State party:**

(a) Strengthen its efforts to systematically make the provisions of the Optional Protocol known to the public at large, including to children in a child-friendly manner, their families and communities;

(b) Develop, in close cooperation with relevant government agencies, civil society organizations, the media, the private sector, communities and children, awareness-raising programmes on all issues covered by the Optional Protocol and protection measures provided against such practices in domestic laws;

(c) Extend and strengthen its training activities and ensure that they are systematic and multidisciplinary; include all areas covered by the Optional Protocol; and are provided to all relevant professionals working with and for children, especially judges, prosecutors, social workers, law enforcement and immigration officials at all levels.

Allocation of resources

15. The Committee is concerned that the State party has not provided adequate information on the budget specifically allocated for activities under the Optional Protocol, the lack of which is a significant obstacle to its implementation.

16. **The Committee recommends that the State party allocate sufficient and targeted resources for the effective implementation of the Optional Protocol at the federal and cantonal levels.**

V. Prevention of the sale of children, child prostitution and child pornography (art. 9, paras. 1 and 2)

Measures adopted to prevent offences prohibited under the Optional Protocol

17. While noting the efforts of the State party to prevent offences prohibited under the Protocol, the Committee is concerned that measures are fragmented and do not cover all areas of the Protocol. In particular, the Committee is concerned that:

(a) The State party lacks programmes that specifically target children in vulnerable and marginalized situations;

(b) There are insufficient mechanisms in place to identify and monitor children at risk of becoming victims to the offences under the Optional Protocol;

(c) Preventive work is often carried out by non-governmental organizations with limited financial support of the State party.

18. **The Committee recommends that the State party expand and strengthen its preventive measures to cover all areas of the Optional Protocol and in particular:**

(a) Establish special prevention programmes targeting children in vulnerable and marginalized situations, including Roma children or other ethnic minority children, children placed in institutions, children living in street situations, children affected by migration, asylum seeking and refugee children and girls who are victims of domestic violence;

(b) Establish mechanisms and procedures for the identification of child victims of the offences under the Optional Protocol, in particular in vulnerable situations, as well as to provide them with psycho-social support and awareness-raising programmes;

(c) Support the relevant non-governmental organizations;

(d) Carry out studies with a view to assessing the scale of sexual exploitation of and trafficking in children, in particular child prostitution and pornography, especially over the Internet.

Child sex tourism

19. The Committee welcomes the measures taken by the State party to prevent child sex tourism, such as the joint educational campaign to protect children from sexual exploitation

in tourism by the State party, Austria and Germany and the elaboration of the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism. The Committee, however, is concerned that an effective regulatory framework is lacking and measures taken to effectively prevent and combat child sex tourism abroad are insufficient.

20. **The Committee urges the State party to:**

(a) Establish and implement an effective regulatory framework and take all necessary legislative, administrative, social and other measures to prevent and eliminate child sex tourism;

(b) Further strengthen its international cooperation through multilateral, regional and bilateral arrangements for the prevention and elimination of child sex tourism;

(c) Increase advocacy with the tourism industry on the harmful effects of child sex tourism, widely disseminate the World Tourism Organization Global Code of Ethics for Tourism among travel agents and tourism agencies;

(d) Encourage these enterprises to become signatories to the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism.

VI. Prohibition of the sale of children, child pornography and child prostitution and related matters (arts. 3; 4, paras. 2 and 3; 5; 6 and 7)

Existing criminal or penal laws and regulations

21. While welcoming the amendments made to the Federal Constitution and the Criminal Code to better reflect the provisions of the Optional Protocol, the Committee is concerned that the Criminal Code does not adequately specify all offences under the Optional Protocol. In particular, the Committee is concerned that:

(a) Not all forms of the sale of children covered by article 2 (a) and article 3, paragraph 1 (a) (i), of the Optional Protocol have been classified as distinct offences from human trafficking;

(b) The State party does not have legislation specifically addressing the solicitation of children for sexual purposes (grooming) and sexting by means of information and communication technology;

(c) The definition of child pornography does not include the production, sale and distribution of images and videos that display naked children but are not considered pornographic in specific contexts;

(d) Some provisions of the Criminal Code punishing crimes under the Optional Protocol, in particular exposing children to pornographic documents, still only protect children up to the age of 16.

22. **The Committee recommends that the State party continue to revise and bring its Criminal Code and other relevant legislation into full compliance with articles 2 and 3 of the Optional Protocol. In particular, the State party should:**

(a) Define, regulate and criminalize the sale of children in accordance with article 3 of the Protocol — a concept that is similar to, but not identical with, trafficking in persons;

(b) Ensure that all offences under the Optional Protocol, including the solicitation of children for sexual purposes (grooming) and sexting, by means of information and communication technology, and the production, sale and distribution of images or videos of naked children in specific contexts are explicitly criminalized;

(c) Ensure that all children under the age of 18 are fully protected by the Criminal Code.

Extraterritorial jurisdiction

23. While welcoming that the exercise of extraterritorial jurisdiction when prosecuting offences against children laid down in article 5 of the Criminal Code does not necessitate double criminality, the Committee is concerned that the non-application of the double criminality requirement does not cover all child victims under the age of 18 or all offences covered under the Optional Protocol.

24. **The Committee recommends that the State party take steps to ensure that domestic legislation enables it to establish and exercise extraterritorial jurisdiction, including jurisdiction without the criterion of double criminality, over all crimes under the Optional Protocol and all child victims under the age of 18.**

VII. Protection of the rights of child victims (arts. 8 and 9, paras. 3 and 4)

Measures adopted to protect the rights and interests of child victims of offences prohibited under the Optional Protocol

25. While noting that the Federal Victim Support Act lays down minimum standards for assistance to victims, the Committee is concerned that:

(a) There are cantonal disparities in the implementation of these standards;

(b) Victim identification in relation to child pornography is insufficient, child victims of human trafficking are often not recognized as victims by law enforcement agencies and children who are being exploited or forced to beg or steal are often not regarded as victims.

26. **The Committee recommends that the State party strengthen measures to protect the rights and interests of child victims of all offences under the Optional Protocol and, in particular:**

(a) Ensure that the standards provided in the Federal Victim Support Act are equally applied in all cantons;

(b) Ensure that child victims of the offences under the Protocol are considered as victims and not offenders and personnel responsible for the identification of child victims are trained in children's rights, child protection and interviewing skills, including judges, prosecutors, law enforcement agencies, social workers, medical staff, migration officials and other professionals working with child victims.

Criminal justice system protection measures

27. While welcoming that the Criminal Procedure Code provides for special provisions for child victims and witnesses, the Committee is concerned that very young children are not adequately protected and that staff working with child victims are not adequately

trained. The Committee is further concerned at the lack of information on programmes for perpetrators of the offences covered by the Optional Protocol.

28. **The Committee recommends that the State party:**

(a) Ensure that all child victims or witnesses of crimes are provided with the protection required in the Optional Protocol;

(b) Ensure that judges, prosecutors, police, social workers, medical staff and other professionals working with child victims and witnesses receive training on child-friendly interaction with them at all stages of the criminal and judicial processes. The State party should be guided in this respect by the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex);

(c) Introduce programmes for the perpetrators of these crimes.

Recovery and reintegration of victims

29. The Committee is concerned about the limited measures to ensure the recovery and reintegration of child victims of all offences under the Optional Protocol. In particular, the Committee is concerned that specialized services and centres for child victims are not available and financed in all cantons and that safe accommodation is lacking.

30. **The Committee recommends that the State party take all necessary measures to ensure that child victims of the offences covered in the Optional Protocol are provided with appropriate assistance, including for their physical and psychological recovery and full social reintegration, by, inter alia:**

(a) Developing programmes to provide short-, medium- and long-term support for all child victims of offences under the Optional Protocol;

(b) Establishing directly or through service providers the specialized services and adequate assistance required for children who have been trafficked, sold for sexual or economic exploitation or otherwise victims of crimes under the Optional Protocol throughout its territory and ensure the allocation of adequate human, technical and financial resources;

(c) Taking the necessary measures to facilitate and increase access to appropriate accommodation for child victims of offences, particularly for children in the most vulnerable situations, and ensure that such infrastructure is sufficiently and adequately available and well equipped.

VIII. International assistance and cooperation (art. 10)

Multilateral, bilateral and regional agreements

31. **The Committee encourages the State party to continue to strengthen international cooperation through multilateral, regional and bilateral arrangements, especially with neighbouring countries, including by strengthening procedures for and mechanisms to coordinate the implementation of such arrangements, with a view to improving prevention and detection and the investigation, prosecution and punishment of those responsible for any of the offences covered under the Optional Protocol.**

IX. Follow-up and dissemination

Follow-up

32. **The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations by, inter alia, transmitting them to the relevant Government ministries, the parliament and to national and local authorities, for appropriate consideration and further action.**

Dissemination of concluding observations

33. **The Committee recommends that the initial report and written replies submitted by the State party and the related recommendations (concluding observations) adopted be made widely available, including (but not exclusively) through the Internet, to the public at large, civil society organizations, youth groups, professional groups and children in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.**

X. Next report

34. **In accordance with article 12, paragraph 2, of the Optional Protocol, the Committee requests the State party to include further information on the implementation of the Optional Protocol in its next periodic report under the Convention on the Rights of the Child, in accordance with article 44 of the Convention.**